

MANDATE

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/19/08

S.D.N.Y. - NYC
08-cv-4594
Wood, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 21st day of July, two thousand eight,

Present:

Hon. Jon O. Newman,
Hon. Guido Calabresi,
Hon. Barrington D. Parker,
Circuit Judges.



John Albery,

Plaintiff-Appellant,

v.

08-2393-pr

The People of the State of New York, *et al.*,

Defendants-Appellees.

Appellant, *pro se*, moves to proceed *in forma pauperis*. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it lacks an arguable basis in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); 28 U.S.C. § 1915(e). Insofar as the district court construed Appellant's complaint as a petition under 28 U.S.C. § 2254, this Court notes that the complaint does not constitute a § 2254 petition for the purposes of the statute's "second or successive" restrictions. *See Adams v. United States*, 155 F.3d 581, 584 (2d Cir. 1998); *see also Slack v. McDaniel*, 529 U.S. 473, 485-86 (2000).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: *Franklin Lee*

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk
by *Gisela Phillip*
Deputy Clerk

ISSUED AS MANDATE: AUG 14 2008